IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9678 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DASHRATHBHAI S. PRAJAPATI

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

1. Special Civil Application No. 9678 of 2001

MR BA VAISHNAV for Petitioner No. 1

MR HARDIK C RAWAL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/12/2001

ORAL JUDGEMENT

Rule. Mr Hardik C Raval waives service of Rule on behalf of the respondent. With the consent of the learned counsel for the parties, the petition is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioner is challenging the judgment and award dated 29-7-1999 passed by the Labour Court, Surat in Reference (LCS) No.862 of 1997 by which the Labour Court dismissed the reference of the petitioner workman on the ground that the departmental inquiry was admittedly legal and valid and that looking to the misconduct, the penalty of dismissal was not disproportionate.

3. The petitioner was a driver with Gujarat State Road Transport Corporation, respondent herein. It is stated that on 13-11-1994 the petitioner was on duty. On account of the fact that the door of the bus on the driver's side was defective, the petitioner had to enter the bus from the rear door. Since the bus started for going to the platform within the bus compound, the person who was sitting near the wheel of the bus on the driver's side for relieving his bladder, died when the bus suddenly started. The petitioner was prosecuted in the Criminal Court in Criminal Case No.195 of 1995 where he was acquitted by the Criminal Court. In the meantime, the Corporation initiated departmental inquiry against the petitioner and passed the order of dismissal. The Reference made at the instance of the petitioner came to be dismissed by the Labour Court.

4. It appears that the workman did not produce the judgment of the Criminal Court acquitting the petitioner in the aforesaid criminal case before the Labour Court.

At the hearing of this petition, a copy of this judgment has been produced by Mr Vaishnav for the petitioner.

In view of the said acquittal and in view of the fact that it is not the case of the respondent Corporation that the witnesses and evidence at the departmental inquiry were different from that produced before the Criminal Court, the principle laid down by the Hon'ble Supreme Court in the case of M. Paul Anthony vs. Bharat Gold Mines Ltd., AIR 1999 SC 1416 would apply.

5. In view of the aforesaid discussion, this appears to be a fit case for interfering with the award passed by the Labour Court dismissing the petitioner's reference.

6. The petition is accordingly allowed. The impugned award of the Labour Court is set aside. So also the order of dismissal dated 25-7-1997 passed by the

Corporation. However, as regards the relief to be granted to the petitioner, it would not be appropriate to grant the petitioner reinstatement with continuity of service and with full backwages. In the facts and circumstances of the case, it would be just and proper to dispose of the petition with a direction that the petitioner shall be given appointment as a fresh employee by 31st January, 2002. The petitioner shall not be paid any backwages from the date of dismissal till the date of reinstatement. It is again clarified that the petitioner is to be employed as a fresh employee and the petitioner will not be given any benefits for the prior period.

9. Since the accident in question is a motor vehicle accident, there is a possibility of the heirs of the deceased making a claim application. In case such an application is made and the Corporation has to pay compensation to the heirs of the deceased, the Corporation will be at liberty to take such award of the Motor Accident Claims Tribunal into consideration while paying the petitioner salary in future by deducting the amount by suitable installments.

10. The petition is accordingly allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(M.S. Shah,J)

zgs/-